HON'BLE SRI JUSTICE K.C. BHANU

W.P.NO.20698 OF 2002

DATED: 25.7.2005

Between:

Ahmed Muqayyer Shah Khan

… Petitioner

and

The Government of A.P. Minorities, Welfare

(Wakf) Department, Hyderabad and another

… Respondents

HON'BLE SRI JUSTICE K.C. BHANU

W.P.NO.20698 OF 2002

ORDER:

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This writ petition has been filed for a writ of Mandamus to declare the impugned G.O.Ms.No.32 dated 11.10.2002 issued by the respondent No.1, removing the petitioner from the post of Government Kazi of Sarkar-e-Elgandal, Karimngar District, as illegal, without jurisdiction and beyond the purview of Section 2 of Kazis Act, 1880 (for short 'the Act').

The facts of the case are that due to the death of one Mohammed Basheeruddin, who was the Kazi of Sarkar-e-Elgandal, Karimnagar District, the said post fell vacant. Since the petitioner, who worked as Qari-un-Nihah along with his father, has accordingly submitted an application with a certificate of Ahl-e-Qidmath-e-Sharaiya, issued by Jamia Nizamia, for the post of Kazi. The Collector, Karimnagar, after ordering enquiry into the matter and receipt of report, recommended the case of the petitioner for appointment as Sadar Kazi, Sarkar-e-Elgandal, Karimnagar District. Basing on the said recommendations of the District Collector, the Government vide G.O.Ms.No.27 dated 14.3.2000 appointed the petitioner as Sadar Kazi for the Sarkar-e-Elgandal, Karimnagar District. He assumed charge and had been performing marriages among the Muslim community and issuing marriage certificates.

It is the case of the petitioner that the son of late Mohammed Basheeruddin, who was the Kazi of Sarkar-e-Elgandal, Karimnagar District, by name Anees Ahmed, having failed in his attempts to get himself appointed as Kazi, got filed a false petition through the 2nd respondent, with certain allegations against the petitioner to the Hon'ble Minister for Wakf Department, Government of Andhra Pradesh, requesting to cancel the appointment of the petitioner as Kazi, after a lapse of one and half years of his appointment. The matter was referred to the District Collector for enquiry, who after conducting enquiry has sent a report on 2.11.2001, observing that the allegations made against the petitioner were baseless.

Having not satisfied with the report of the Collector, the 1st respondent herein issued the impugned Memo No.5037/Wakf-1/A1/2001 dated 23.1.2002 appointing the Chief Executive Officer, A.P. State Wakf Board, as enquiry officer to conduct a detailed enquiry into the allegations levelled against the petitioner and also directed that the Qazzath of Sarkar-e-Elgandal, Karimnagar District be performed through any elder local Muslim as temporary Kazi, until further orders and also suspended the petitioner as Government Kazi. Aggrieved thereby, the petitioner preferred W.P.No.1873 of 2002, which was disposed of by this court observing that if the Government contemplates any action adverse to the interests of the petitioner, it is needless to mention that such action has to be taken after complying with the principles of natural justice.

The Government, after careful consideration of the Enquiry Officer's report, wherein it is reported that the petitioner had committed certain grave irregularities during his incumbency as Government Kazi to Sarkar-e-Elgandal, Karimnagar District, and also keeping in view the directions passed by this court in W.P.No. 1873 of 2002, by memo dated 3.9.2002, directed the petitioner to explain as to why he should not be removed as Government Kazi, in exercise of powers under the Act, for the grave irregularities committed by him during his incumbency as Government Kazi. In response to which, the petitioner by representation dated 7.9.2002 sought for certain information/documents, which was disposed for lack of merits by the Government vide memo dated 25.9.2002, directing the petitioner to submit his explanation to the memo dated 3.9.2002 within 10 days thereafter. The petitioner accordingly submitted his explanation on 8.10.2002, which was not taken into consideration by the respondent-Government. It is also felt by the Government that the petitioner has given a wrong statement before the Zonal Inspector of Police, CID, Karimnagar, in which he has stated that he was appointed as Deputy Kazi by late Kazi Md. Basheeruddin and was working as Deputy Kazi since 1982, whereas in his

representation dated 7.12.1999 made to the Government, it has been stated that he was only assisting his father from 1984 onwards till his father's demise. The petitioner also preferred W.A.No.1540 of 2002 against the orders in W.P.No.1873 of 2002, whereunder the Division Bench of this court directed the government to consider the report of the Chief Executive Officer, A.P. State Wakf Board and pass final orders within two months from the date of receipt of the order and in the mean while directed the petitioner to continue as Kazi.

After considering the report of the Chief Executive Officer, the Government passed the impugned G.O.Ms.No.32 dated 11.10.2002, which is under challenge before this court by way of this present writ petition.

Learned counsel appearing for the petitioner contended that the misconduct alleged against the petitioner does not relate during the incumbency of the post of Kazi and, therefore, under the Act, the Government cannot issue the impugned proceedings in view of the fact that the misconduct, even according to the Government, has taken place prior to the holding of the office by the petitioner. Hence, he prays to allow the writ petition.

On the other hand, the learned Government pleader contended that the Government, after careful consideration of the report of the enquiry officer-Chief Executive Officer, and in pursuance of the directions given by this court in W.A.No.1540 of 2002, and after giving reasonable opportunity to the writ petitioner, passed the impugned order, which does not suffer from any incurable legal infirmities so as to call for interference by this court. Learned counsel appearing for the second respondent contended that if any question arises whether any person has been rightly appointed as Kazi, the decision thereof by the State Government shall be conclusive, and therefore, on any misconduct or irregularity committed during the incumbency of the office of the Kazi or even prior to the same, the Government has got ample power to take appropriate decision.

It is not in dispute that the petitioner was appointed as a Kazi to Sarkar-e-Elgandal, Karimnagar District vide G.O.Ms.no.27 dated 14-03-2000 and after assuming the charge of that post, he was discharging his duty as a Government Kazi. Thereafter, the second respondent gave a representation to the Government bringing to the notice of the alleged irregularities committed by the petitioner. The Government, while ordering to conduct a detailed enquiry against the allegations levelled against the petitioner by the Chief Executive Officer as Enquiry Officer, vide memo dated 23.1.2002, suspended the petitioner. Aggrieved thereby, he preferred W.P.No.1873 of 2002. This court, by order dated 20.8.2002, disposed of the said writ petition with an observation that if the Government contemplates any action adverse to the interests of the petitioner, it is needless to mention that such action has to be taken after complying with the principles of natural justice.

After giving necessary opportunity of hearing to the petitioner, the Government finally passed the impugned proceedings removing the petitioner from the post of Kazi.

It is relevant to have a glance at Section 2 of the Act, which confers power on the State government to appoint a Kazi, which reads as under:

> "2. Power to appoint Kazis for any local area.—Wherever it appears to the State Government that any considerable number of the Mohammedans resident in any local area desire that one or more kazis should be appointed for such local area, the State Government may, if it thinks fit, after consulting the principal Mohammedan residents of such local area, select one or more fit persons and appoint him or them to the kazis for such local area.
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> If any question arises whether any person has been rightly appointed as kazi under this section, the decision thereof by the State Government shall be conclusive.
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> The State Government may, if it thinks fit, suspend or remove any kazi appointed under this section who is guilty of any misconduct in the execution of his office, or who is for a continuous period of six months absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere, or is declared an

> insolvent, or desires to be discharged from the office or who refuses or becomes in the opinion of the State Government unfit, or personally incapable, to discharge the duties of the office."

The learned Government Pleader as well as the learned counsel appearing for the second respondent placed reliance on the above said Section 2, whereas the learned counsel for the petitioner placed reliance on Section 3, which reads as follows:

> "3. Naib Kazis.—Any kazi appointed under this Act may appoint one or more persons as his naib or naibs to Act in his place in all or any of the matters pertaining to his office throughout the whole or in any portion of the local area for which he is appointed, and may suspend or remove any naib so appointed.
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> When any kazi is suspended or removed under Section 2, his naib or naibs (if any) shall be deemed to be suspended or removed, as the case may be."

Therefore, basing on the said clause, the counsel vehemently contended that the misconduct alleged against the petitioner does not relate during the incumbency of his office.

Admittedly, the misconduct does not relate in the execution of his office because even according to the Government, the misconduct related to the year 1999, when the petitioner made an application for the post of Kazi and by that time, the petitioner was not appointed as a Kazi. Therefore, this clause on which the learned counsel appearing for the petitioner placed implicit reliance has no application to the present facts of the case.

Since it is not the case of the Government that the petitioner was removed from service because of misconduct while he was in office, a regular departmental enquiry was conducted to know whether the petitioner was a fit person to continue

as a Kazi. After taking into consideration the enquiry report, explanation was called for from the petitioner. Basing on the enquiry report and explanation, the Government came to the conclusion that the petitioner has given a wrong statement before the Zonal Inspector of Police, CID, Karimnagar, in which he has stated that he was appointed as Deputy Kazi by late Kazi Md. Basheeruddin and was working as Deputy Kazi since 1982, whereas in his representation dated 7.12.1999 made to the Government, it has been stated that he was only assisting his father from 1984 onwards till his father's demise and therefore felt that a person who holds the post of Government Kazi should be sincere, honest, noble and pious.

In view of the contradictory statements made by the petitioner, the Government has power to remove a Kazi not only for the misconduct said to have been committed by the Kazi during his incumbency, but also misconduct not relating to the period of incumbency. So, sufficient material is available with the Government to remove the petitioner from the post of Kazi and therefore, the action cannot be said to be illegal or without jurisdiction. Section 2 of the Act is the very source of power conferred on the Government to remove an incumbent from the post of Kazi if the State Government thinks fit to suspend or remove any Kazi appointed, who is guilty of any misconduct in the execution of his office. It is to be noted here that the action of the Government in removing the petitioner cannot be said to be wilful or discriminatory since a detailed enquiry was conducted by the Government by appointing an Enquiry Officer to enquire into the misconduct alleged against the petitioner. In this connection, the Government also followed the directions issued by this Hon'ble Court scrupulously and after careful examination of the matter and after affording necessary opportunity to the petitioner in this regard, the impugned proceedings of removal of Kazi came to be passed, in accordance with law.

In that view of the matter, the order under challenge does not suffer from any incurable legal infirmities so as to call for interference by this court.

Accordingly, the writ petition is devoid of merits and the same is accordingly dismissed. No costs.

25.7.2005

CVM